

ORIGINAL

Before the

FEDERAL COMMUNICATIONS COMMISSION

Washington, D.C. 20554

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FCC MAIL ROOM

In the Matter of

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Amendment of Section 73.202(b)

)

MM Docket No. 94-85

Table of Allotments,

)

RM-8482

FM Broadcast Stations

)

(Falmouth, Massachusetts and

)

Mashpee, Massachusetts

)

DOCKET FILE COPY ORIGINAL

TO: Chief, Allocations Branch

Suggestion of Controlling Precedent

1. Leapfrog Radio Partnership, successor-in-interest to J J Taylor Companies, Inc., submits that the attached decision in Hallie, Wisconsin, DA 95-1786, released August 21, 1995, is dispositive of its request to reallocate Channel 266A from Falmouth to Mashpee, Massachusetts.

2. In Hallie, Wisconsin, Channel 279C1 was reallocated from Ladysmith to Hallie, Wisconsin, to serve as Hallie's second local transmission service. More than half of Hallie's population is located in the Eau Claire Urbanized Area. Nevertheless, the independence of Hallie from Eau Claire as evidenced by

(a) The opinion of Hallie's residents of their independent status;

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- (b) Hallie's local Board of Supervisors;
- (c) Hallie's police department;
- (d) Hallie's Land Use Zoning and Planning Office;
- (e) The separateness of Hallie's utilities and ambulance services; and
- (f) The presence of schools, churches, social organizations, parks and recreational facilities in Hallie

resulted in the conclusion that Eau Claire's stations should not be attributed to Hallie for allocation purposes.

3. Each of the factors that justified reallocation of Channel 279C1 to Hallie is present in Leapfrog Radio Partners' proposal to reallocate channel 266A to Mashpee, Massachusetts. Roughly eight percent of Mashpee, Massachusetts' area is in the Hyannis, Massachusetts Urbanized Area. However the independence of Mashpee from Hyannis is evidenced by each and every factor evaluated in Hallie Wisconsin, ie:

- (a) The opinion of Mashpee's residents of their separateness;
- (b) Mashpee's local Board of Selectmen;
- (c) Mashpee's local police department;
- (d) Mashpee's Zoning Board, Housing Authority and Building Departments;
- (e) Mashpee's local utilities and Fire Department; and
- (f) The presence of schools, churches, social organizations, parks and recreational facilities in Mashpee.¹

¹ This is not an exhaustive list of factors demonstrating Mashpee's independence from the Hyannis Urbanized Area. See Comments of J J Taylor Companies's Inc., MM Docket No. 94-85, filed September 16, 1994.

Moreover, unlike the case in Hallie, Wisconsin, Mashpee has no existing broadcast transmission service. Allotment to Mashpee of a first local transmission service is a result even more compelling than the allotment of a second local transmission service to Hallie, Wisconsin.

Respectfully submitted,

A handwritten signature in black ink, reading "Joseph A. Belisle". The signature is fluid and cursive, with the first name "Joseph" and last name "Belisle" clearly legible.

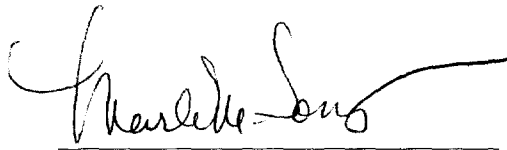
Joseph A. Belisle
Counsel for
Leapfrog Radio Partnership

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CERTIFICATE OF SERVICE

I, Marlene M. Torres certify that a copy of the foregoing Suggestion of Controlling Precedent was sent via First Class U.S. Mail this 29th day of August 1995 to the following person:

Ms. Joan Orr
Box 1443
38 Thad Ellis Road
Brewster, MA 02631

A handwritten signature in cursive script, appearing to read "Marlene M. Torres", is written over a horizontal line.

Marlene M. Torres

Before the
Federal Communications Commission
Washington, D.C. 20554

MM Docket No. 90-647

In the Matter of

Amendment of Section 73.202(b),
Table of Allotments,
FM Broadcast Stations.
(Hallie and Ladysmith,
Wisconsin)

RM-7180

REPORT AND ORDER
(Proceeding Terminated)

Adopted: August 11, 1995; Released: August 21, 1995

By the Chief, Allocations Branch:

1. The Commission has before it for consideration the *Notice of Proposed Rule Making*, 6 FCC Rcd 111 (1991), issued in response to a petition for rule making filed by Stewards of Sound, Inc. ("Stewards"), licensee of Station WWIB, Channel 279C1, Ladysmith, Wisconsin. The *Notice* proposed the reallocation of Channel 279C1 from Ladysmith to Hallie, Wisconsin, and modification of the license for Station WWIB accordingly. Stewards filed comments reiterating its intention to apply for Channel 279C1, if allotted to Hallie. No other comments were received at the Commission.

2. In the *Notice*, we stated that we were unable to determine if the reallocation of Channel 279C1 from Ladysmith to Hallie would result in a preferential arrangement of allotments. We noted that Hallie is partially within the Eau Claire, Wisconsin, Urbanized Area as defined by the U. S. Census, and questioned whether Hallie should be credited with all of the services licensed to the Urbanized Area or whether the reallocation would provide Hallie with its first local FM broadcast service. Stewards does not propose to relocate its transmitter or upgrade its facilities. Station WWIB currently provides Hallie with a 70 dBu signal from the licensed site. Therefore, the reallocation would not provide any first or second full-time aural service and there would be no loss or gain of reception service to either community or the surrounding area. Since Hallie (popula-

tion 4,531 persons according to the 1990 Census)¹ already receives local aural transmission service from one station, the proposal would not result in the provision of a first local aural transmission service.² Stewards notes that Ladysmith receives local transmission service from three stations.³

3. Stewards submitted information to support its claim that Hallie is an independent community deserving of a first local FM service. According to Stewards, Hallie has more need than Ladysmith with regard to local transmission service as Ladysmith currently has three stations while only one AM station is licensed to Hallie. Therefore, adoption of the proposal will equalize the communities at two stations each. Stewards states that although it does not qualify for the highest priority, first reception service, there will be no loss of service since it does not intend to relocate the transmitter. Stewards contends that Hallie is an independent community from Eau Claire with its own local government, Police Department and fire chief, utility services, schools, churches and social organizations and a full-time ambulance service. According to Stewards, there are 1,258 residential homes and 124 businesses in Hallie and that some residents work outside Hallie and residents of other communities commute to Hallie to work. Stewards argues that the Town of Hallie is a separate and independent community from Eau Claire and should not be credited with all of the aural services licensed to the Eau Claire Urbanized Area.

4. Stewards requested action on its petition in accordance with Section 1.420(i) of the Rules which allows a change in community of license without facing competing expressions of interest. See *Amendment of the Commission's Rules Regarding Modification of FM and TV Authorizations to Specify a New Community of License* ("Change of Community R&O"), 4 FCC Rcd 4870 (1989), *recon. granted in part* ("Change of Community MO&O"), 5 FCC Rcd 7094 (1990). As indicated in the *Notice*, Hallie is partially within the Eau Claire, Wisconsin, Urbanized Area. Although this is not a request for a first local service preference, because Hallie is located partially within an urbanized area, we shall use the criteria established in *Huntington Broadcasting Co. v. FCC*, 192 F. 2d 33 (D.C. Cir. 1951), *RKO General, Inc.* ("KFRC"), 5 FCC Rcd 3222 (1990), and *Faye and Richard Tuck* ("Tuck"), 3 FCC Rcd 5374 (1988) as a guideline in this proceeding to determine whether to attribute the Eau Claire transmission services to Hallie. Under these cases, three criteria are considered—signal population coverage, the size of the suburban community relative to the adjacent city, and the interdependence of the suburban community with the central city.⁴

5. With respect to "signal population coverage," Station WWIB currently provides a 70 dBu signal over Eau Claire, Hallie and Ladysmith. Since Stewards indicates that it does

¹ The 1980 Census credited Hallie with a population of 4,275. Both the 1980 and 1990 Census indicate Hallie is partially within the Eau Claire Urbanized Area.

² Station WOGO(AM) is licensed to Hallie.

³ Stations WLDY(AM), WLDY-FM and WWIB are licensed to Ladysmith.

⁴ There are eight factors relevant to interdependence: (1) the extent to which community residents work in the larger metropolitan area, rather than the specified community; (2) whether the smaller community has its own newspaper or other media that covers the community's local needs and interests; (3) whether the community leaders and residents perceive the

specified community as being an integral part of, or separate from, the larger metropolitan area; (4) whether the specified community has its own local government and elected officials; (5) whether the smaller community has its own telephone book provided by the local telephone company or zip code; (6) whether the community has its own commercial establishments, health facilities, and transportation systems; (7) the extent to which the specified community and the central city are part of the same advertising market; and (8) the municipal services such as police, fire protection, schools, libraries. See *KFRC supra*.

not intend to move its transmitter, there will be no change in coverage. As for size and proximity, Hallie has a 1990 census population of 4,531 people of which 2,338 are located within the Eau Claire Urbanized Area. The community of Hallie is located approximately six miles from Eau Claire. Eau Claire has a population of 56,856 people.

6. With respect to the third factor, interdependence, we conclude that Hallie is sufficiently independent from Eau Claire to warrant a second local service. Stewards has shown that the residents of Hallie consider the town to be independent from Eau Claire and take pride in their independence. Hallie has its own local government and elected officials consisting of a five-person Board of Supervisors with a full-time secretarial staff. The Hallie Police Department has five full-time officers and several reserve officers. Hallie has a full-time Fire Chief and participates in the wider area fire protection district. Hallie has a Land Use Planning and Zoning Office in the Chippewa County Zoning Office and is a member of the Regional Planning district. Hallie is provided utility services by Sanitary District No. 1, Town of Hallie, as well as full-time ambulance service. The residents of Hallie are members of the Chippewa Falls School District which operates two schools in Hallie. There are also two Christian schools in the community. Hallie is home to nine churches and there are nineteen social and service organizations that serve the residents of the community. Hallie also has an extensive park system and recreational facilities to serve its residents. Stewards provided statistics indicating there are approximately 1,258 residential homes and 124 businesses in the community of Hallie. Stewards did not provide exact figures but states that Hallie residents work outside of Hallie as well as in the community while residents of other surrounding communities commute to Hallie to work.

7. We conclude that Hallie, partially located within the Eau Claire Urbanized Area, should be treated as a separate and distinct community. While factors one and two would appear to favor attributing the Eau Claire stations to Hallie, the third factor, interdependence of the suburban community to the urbanized area, strongly favors a finding of not attributing the Eau Claire stations to Hallie. As stated in *Tuck*, the size and proximity of the specified community to the central city and signal population coverage are pertinent, but less significant than evidence of independence. As a result, we will not attribute the Eau Claire stations to Hallie.

8. Having made that decision, we must next determine whether Steward's proposal would result in a preferential arrangement of allotments. To do so, we must compare the existing and proposed arrangement of allotments using the allotment priorities set forth in *Revision of FM Assignment Policies and Procedures*.⁵ Our decision is based on Priority No. 4, other public interest matters. Under this priority, the proposed arrangement of allotments would result in the addition of a first local FM station and first competitive local aural service to Hallie, population 4,531. By way of contrast, retaining the existing arrangement of allotments would result in Ladysmith, population 3,938, having three local transmission services. Since Hallie has a larger population, we believe that the public interest is better served by providing a second local transmission service to Hallie

rather than having three such services in Ladysmith. Our view is further buttressed by the fact that there will be no disruption in reception service to residents of Ladysmith because Stewards is not moving its transmitter. Ladysmith will continue to receive local service from Stations WLDY(AM) and WLDY-FM while Hallie will get local service from Stations WOGO(AM) and WWIB. Based on the information before us, we find that the public interest would be served by reallocating Channel 279C1 from Ladysmith, Wisconsin, to Hallie, Wisconsin.

9. Channel 279C1 can be allotted to Hallie, Wisconsin, in compliance with the Commission's minimum distance requirements at the licensed site of Station WWIB.⁶ In accordance with the provisions of Section 1.420(i) of the Commission's Rules, we will modify the license for Station WWIB to specify Hallie, Wisconsin, as its community of license on Channel 279C1 in lieu of its use at Ladysmith, Wisconsin.

10. Accordingly, pursuant to the authority contained in Sections 4(i), 5(c)(1), 303(g) and (r) and 307(b) of the Communications Act of 1934, as amended, and Sections 0.61, 0.204(b) and 0.283 of the Commission's Rules, IT IS ORDERED, That effective October 5, 1995, the FM Table of Allotments, Section 73.202(b) of the Commission's Rules, IS AMENDED for the communities listed below, to read as follows:

Community	Channel No.
Hallie, Wisconsin	279C1
Ladysmith, Wisconsin	224A

11. IT IS FURTHER ORDERED, That pursuant to the authority contained in Section 316(a) of the Communications Act of 1934, as amended, that the License of Station WWIB, Ladysmith, Wisconsin, IS MODIFIED, to specify operation at Hallie, Wisconsin, subject to the following conditions:

(a) Nothing contained herein shall be construed as authorizing any change in License BLH-5807 except for the community as specified above. Any changes, except those specified require prior authorization pursuant to an application for construction permit (FCC Form 301).

(b) Program tests may be conducted in accordance with the provisions of Section 73.1620 of the Rules, PROVIDED the transmission facilities comply in all respects with License BLH-5807, except for the community as specified above, and a license application (Form 302) is filed within 10 days of commencement of program tests.

12. Pursuant to Commission Rule Section 1.1104(1)(k) and (2)(k), any party seeking a change of community of license of an FM or television allotment or an upgrade of an existing FM allotment, if the request is granted, must submit a rule making fee when filing its application to implement the change in community of license and/or upgrade. As a result of this proceeding, Stewards of Sound,

⁵ (1) First full-time aural service; (2) Second full-time aural service; (3) First local service; and (4) Other public interest matters. [Co-equal weight would be given to priorities (2) and

(3)].
⁶ The coordinates for Channel 279C1 at Hallie are 45-06-35 and 91-09-43.

Inc, licensee of Station WWIB, is required to submit a rule making fee in addition to the fee required for the applications to effect the change in community of license.

13. IT IS FURTHER ORDERED, That this proceeding IS TERMINATED.

14. For further information concerning this proceeding, contact Kathleen Scheuerle, Mass Media Bureau, (202) 418-2180.

FEDERAL COMMUNICATIONS COMMISSION

John A. Karousos
Chief, Allocations Branch
Policy and Rules Division
Mass Media Bureau